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C O N F I D E N T I A L SECTION 01 OF 04 THE HAGUE 001674

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DEPARTMENT FOR S/WCI - PROSPER/MILLER, EUR - BOGUE, EUR/SCE
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E.O. 12958: DECL: 1.5 FIVE YEARS AFTER CLOSURE OF ICTY

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SUBJECT: ICTY: LILIC'S TESTIMONY AGAINST MILOSEVIC A MIXED
BAG

REF: THE HAGUE 2170

Classified By: Legal Counselor Clifton M. Johnson per 1.5 (b) and (d) a
nd 1.6.

1. (C) Summary. To outside observers, Former Yugoslav President Zoran Lilic's testimony against Slobodan Milosevic before the International Criminal Tribunal for the Former Yugoslavia (ICTY) last week looked like a mixed bag. Lilic gave a detailed accounting of Milosevic's role in decision-making in Belgrade and provided strong evidence for Milosevic's responsibility for aspects of the conflict in Kosovo. However, Lilic gave direct evidence against the Prosecution's claim that Milosevic bears responsibility for the July 1995 massacres at Srebrenica. Chief Prosecutor Carla Del Ponte told embassy legal officers that the prosecution was not surprised by the testimony and that it was, apart from Srebrenica, "good" on all counts. A senior trial attorney in the case, however, gave a much more downbeat assessment of Lilic's performance, revealing that there was "fierce debate" within the OTP about whether, in light of his testimony on Srebrenica and the Sarajevo siege, he should be called by the prosecution at all. End Summary.

2. (U) Lilic testified before the ICTY after the Government of Serbia and Montenegro (SAM) granted him a release from his responsibility to maintain state secrets. The testimony, at SAM's insistence, was limited in scope and two government representatives were present during the proceedings. The representatives also made it clear that they objected to any document dated between 1993 and 1997 being discussed in public session. Most of the three days of testimony (direct and cross-examination), however, were held in open session.

3. (U) During cross-examination, Milosevic referred to the United Nations guarantee to respect the territorial integrity and sovereignty of Yugoslavia and asked Lilic if their resistance pushed former President Clinton back to the United Nations, since NATO was unable to "set foot in Yugoslavia." Judge May interrupted and stated that the witness "cannot give evidence for Mr. Clinton." Milosevic responded that he hoped when the appropriate time comes, Judge May will issue an order for Mr. Clinton to testify.

LILIC UNDERMINES PROSECUTION CASE FOR CRIMES IN BOSNIA

4. (U) Lilic testified on direct that he was certain that Milosevic had not ordered the massacre, stating, "I know that he was personally very upset and angry; I think that he was very sincere in his behavior and conduct." Lilic also claimed that there was no way that the Yugoslav Army (VJ) was involved in the massacre. Lilic attempted to say more, but the Prosecution directed him to another topic. On cross-examination, Milosevic noted that Lilic had mentioned Srebrenica several times during his testimony the previous day, but that lead Milosevic prosecutor Nice had kept interrupting him. Judge May defended Nice's objections saying that he was correct to object to Lilic's opinions of Milosevic's involvement in Srebrenica. Milosevic argued that Lilic had detailed knowledge of the events during that time period. Milosevic asked Lilic to comment on Serbian involvement in Srebrenica, saying that it was a truly tragic and dramatic event. Lilic responded that no one from the Yugoslav leadership could have issued an order or known about the massacres. His impression was that Milosevic was "genuinely angry...shaken about it" when Lilic told him what had happened. Lilic testified that Milosevic said, "Those crazy Serbs from Pale ...I cannot believe they did something like this." Milosevic asked what the RS's response was to their inquiries into the massacre; Lilic responded that the RS leadership said they knew nothing about it.

5. (U) Lilic did confirm that in the Fall of 1995, the Yugoslav army set up a military training center to aid and train Bosnian Serb troops. He testified that General Perisic helped set up the facility, but that Milosevic put paramilitary leader Dragan Vasiljkovic in charge of running it. Lilic said that when he found out about the training center, he was "amazed, and I ordered the camp to be disbanded."

16. (C) Lilic's testimony relating to Srebrenica, and to limited command-and-control over RS forces in Bosnia, did not come as a surprise to the Prosecution, as Chief Prosecutor Del Ponte told Embassy legal officers directly. Del Ponte gave an impression of being at ease with the testimony and, in particular, the positive points drawn out (paras 7 - 14 below). Yet Dermot Groome (strictly protect), a senior trial attorney (and former Manhattan assistant district attorney) with responsibility for the Bosnia portion of the prosecution of Milosevic, was much less sanguine about Lilic's performance. He told an Embassy legal officer that there was a "fierce debate" within the prosecution team about whether Lilic should be called to testify given what they knew of his intended testimony. When embassy legal officer noted that Lilic's testimony went beyond opinion, eliciting Milosevic's alleged "angry" and "shaken" responses to word of the massacres, Groome expressed his worry that the trial chamber would treat the testimony as direct evidence laying the ground for reasonable doubt that Milosevic knew of the JNA's activities in and around the Srebrenica enclave. Moreover, the testimony suggesting a lack of real control over the JNA and Bosnian Serb officials could damage the prosecution's case that Milosevic bears responsibility for the siege of Sarajevo as well. Groome, whose team is already scrambling to unearth evidence linking Milosevic to Srebrenica, left an impression of deep frustration that Lilic was allowed to testify at all.

TESTIMONY SUPPORTING THE PROSECUTION CASE

17. (U) The Prosecution extracted from Lilic support for its case in two principal areas -- his dominating decision-making role in Belgrade between 1993 and 1997, and his responsibility for atrocities in Kosovo.

18. (U) Milosevic as decision-maker: Lilic testified that nothing important happened within official Belgrade without Milosevic's knowledge. He helped the Prosecution untangle the web of relationships that tied the Milosevic circle together, focusing, for example, on Jovica Stanisic, the Head of the Serbian secret service within the Ministry of Interior (MUP), a key ally for Milosevic and one of the most powerful in the leadership at the time. According to the Constitution, Stanisic was to report to the Minister of Interior, but in reality reported directly to Milosevic. (NB: Stanisic, in ICTY custody, pled not guilty to OTP charges on June 13.) Lilic testified that the Socialist Party of Serbia (SPS) and the Yugoslav United Left (JUL) "were under the domination and authority of Milosevic."

19. (U) He also testified that Milosevic had a "great deal of influence" over Serbs in Bosnia and Croatia as well as the Yugoslav Army VJ, but that "'control' was too strong of a word." Lilic testified that the VJ briefed Milosevic regularly and that the General Staff of the VJ was the only source of information they received. He said that a group of Generals remained close to Milosevic to advance their careers. Lilic alternated back and forth as to the Supreme Defense Council's (SDC's) power and Milosevic's influence and knowledge of all government matters. Lilic further said that Milosevic did not do anything outside his right prescribed by the Constitution, but that he did play a dominant role in the SDC. When asked about Milosevic's relationship with Mladic, Lilic confirmed other witness testimony that Mladic was very unpredictable and unreliable, so the relationship between Milosevic and Mladic varied. The relationship deteriorated over time, but once the Vance-Owen Plan failed, efforts were made to improve their relationship.

110. (U) Kosovo: Much of Lilic's testimony focused on a letter sent from General Perisic to Milosevic on June 18, 1998. The letter detailed the problems in Kosovo, particularly the illegal activity of the police. The letter urged Milosevic to order a state of emergency in Kosovo and reiterated that without a state of emergency, the activities of the VJ there were illegal and could be subject to reprisals from NATO and the international community. The letter further accused Milosevic of going along with the illegal decisions of the SDC and that Milosevic did not have authority to do so, violating the principle of subordination and unity of command. In writing the letter, Lilic said that Perisic wanted to draw attention to the seriousness of the problems there and that any undermining of this would make things worse. He stated that Perisic was replaced four months after the letter was written. In response to Judge May's query as to Milosevic's rationale for not responding, Lilic said that Milosevic did not want to accept the seriousness of the situation which was necessary to recognize and deal with the problems. He also noted that in a state of emergency, the police would have been united and attached to the VJ.

111. (U) During the first day of cross-examination, Milosevic was nonconfrontational and at times rather complimentary

towards Lilic, often referring to "we" when inquiring about the positive steps the Yugoslav government took during the conflicts. Milosevic's actions and gestures appeared to be the result of knowing that Lilic could help him on some points. Milosevic asked, "Did we make every effort for peace in Bosnia and Croatia?" Lilic responded, "Yes, we did. And the product of our efforts was the peace plans offered to the world." Lilic said that it was clear that Milosevic's influence was dominant over foreign affairs. He also said that there would have been no Dayton without the persistence and pressure from Milosevic. He mentioned that Karadzic obstinately refused all suggestions for a peace plan and that no one trusted Karadzic. Milosevic said, "This is what I wanted to hear...no doubt the efforts were crucial." Lilic responded that "Yes, your efforts, your ability and negotiations were crucial."

¶12. (U) However, during the second day of cross-examination, the tone turned confrontational as Lilic testified to Milosevic's accountability for Kosovo. Lilic became angry at one point and said that he wants his son to be proud to be a Serb, but that "there are more Serbs in the ICTY prison than there are in Kosovo now" and that they should have done more to intervene in Kosovo. Milosevic focused many of his initial questions on the actions of the KLA and seeking Lilic's confirmation that there was no discussion within the government to expel Albanians from Kosovo. Lilic testified that Milosevic never gave an order to launch an attack on the civilian population, and in fact they sought investigations into such attacks. With regard to the Perisic letter, Milosevic asked Lilic if the letter was a "smokescreen" for what was to have been done in Kosovo and that the necessary actions could have been done without a state of emergency being issued. Lilic responded that he could hardly agree and that it was Milosevic's opinion at the time that the army could have responded to terrorist activities without a state of emergency, but that the JNA could have done more if a state of emergency had been implemented.

¶13. (U) Milosevic inquired about a letter Lilic sent to Milosevic that urged Milosevic to accept the latest United Nations proposal given to Milosevic after a G8 meeting in Berlin and championed by former German Chancellor Kohl to accept a UN peacekeeping mission in Kosovo. Lilic stressed that all Milosevic had to do was make a public statement that he would accept the proposal. Milosevic then referred to a letter which had handwritten notes from both Milosevic and Lilic dated around May 5, 1998. Milosevic was adamant that he told Lilic to accept the proposal and said so in the note. In response, Lilic referred to his handwritten note that said "useful ambiguity." Lilic insisted that Milosevic did not authorize him to accept the proposal, but more importantly, he made it clear to Milosevic that he would have to publicly accept the proposal himself. After Judge May asked for clarification, Lilic said that he tried to reach Milosevic for almost 2 weeks after the UN proposal was given to discuss an end to the conflict. After that, he sent the letter to Milosevic outlining the problems in Kosovo, the UN proposal, and urging Milosevic to act quickly.

¶14. (U) Milosevic and Lilic subsequently entered into a heated exchange where Milosevic said, "...that is why we responded favorably (to the proposal)." Lilic responded with, "But...we did not favorably respond." Milosevic countered, "You said you would send the note to Chancellor Kohl--my favorable response." Lilic responded with, "Did you really think I would fax Kohl your handwritten notes?" Judge May then intervened and asked what happened next. Lilic testified that after he noted that Milosevic instructed him to be ambiguous in his response, Milosevic was scheduled to appear on television to accept the proposal. Since that did not happen, Lilic did not transmit any response to Kohl. At that time, Milosevic told Lilic that he wanted to re-establish contacts with the foreign interlocutors.

THE HEALTH OF THE ACCUSED

¶15. (C) Throughout Lilic's testimony, on both direct and cross-examination, Milosevic looked vigorous, alert and healthy, buoyed especially by those aspects of Lilic's testimony that seemed to be given in his favor. Registry legal adviser Christian Rohde (strictly protect), who sees Milosevic regularly, confirmed to an embassy legal officer that the accused's health has been improving markedly since the middle of the spring. He said that his blood pressure is in control and that he seems to be less stressed than in earlier portions of the trial. With no hint of sarcasm, Rohde attributed the upturn in Milosevic's health to the absence of the accused's wife, Mira Markovic, from The Hague. Early in the spring, many close observers of Milosevic saw the dip in his health as a sign of his concern for his wife, on the run from Belgrade prosecutors, and the impact of the round-up of his Belgrade support network in the aftermath of the assassination of Zoran Djindjic. Rohde reports that during her previous visits to The Hague, Markovic -- widely

known to be the organizing force behind Milosevic's defense
-- would leave her husband demonstrably stressed and anxious.
Her calls from "some former Soviet republic" do not seem to
impose the same kinds of rigors on him, Rohde reported.

COMMENT

16. (C) The OTP took a gamble with Lilic's testimony and, in retrospect, may have miscalculated. While the testimony confirmed many points the Prosecution is trying to prove, such as direct links to individuals, the army and paramilitaries, knowledge of events, and most importantly his involvement in Kosovo, it was very damaging on Srebrenica. Given that the OTP already had a relatively strong case for Milosevic's responsibility for crimes committed in Kosovo, it may have been prudent, as some OTP lawyers urged, to forgo testimony that undercut the already shaky case on Srebrenica. Limiting direct examination to non-Bosnia topics (with the resulting limitation on the scope of the cross examination), would at least have deprived Milosevic of an opportunity to be cleared by Lilic for any role in Srebrenica. Lilic's value may be further diminished when he returns, "at a convenient date," for one additional day for cross-examination by Milosevic and the amicus curiae, as well as a chance for re-direct and to authenticate the documents recently turned over to the OTP.

SOBEL